influenced, consciously or unconsciously, by their ideas of convenience and justice and by public opinion. Couple this position of Mr. Black's with his doctrine that *stare decisis* "applies with special force to the construction of constitutions," and the attitude taken by the New York Court of Appeals in its interpretation of "due process" becomes natural if not inevitable. On the other hand, the attitude which the Supreme Court at Washington is now assuming in the interpretation of "due process" appears to involve the negation of one or the other, if not of both, of Mr. Black's principles.

Munroe Smith.

THE LAW OF CONTRACTS. By CLARENCE D. ASHLEY. Boston: LITTLE, BROWN & Co. 1911. pp. ix, 310.

This carefully and conscientiously prepared treatise well deserves the attention and study of the profession, as well as students of law. It is a scholarly work, and discloses painstaking investigation on the part of its author.

One feature, particularly, entitles the book to high commendation, namely, its lucidity, which is coupled with a freedom from efforts at evasion of difficult questions. Too many text-books manifest such confusion of thought, or of expression of thought, that the reader is left in a maze, or, at the very least, in uncertainty as to just where the author stands on a given proposition. This may result from either one of two things:—to wit, either from the author's failure to think clearly, or from his wilful design to cover up, by mystification of language, his paucity of thought on the subject under discussion.

The work under review is entirely free from this vice. The author does not seek, in any part of his work, to dodge an issue, but on the contrary meets it courageously and when he does not find a solution satisfactory to himself he frankly says so. In a word, the author is entitled to the highest praise for the intellectual honesty displayed in his labors. In this respect the treatise should be a model for other writers.

The book covers, in compact form, all the topics legitimately belonging to the law of simple contracts, and in addition contains some discussion of the law of promises under seal. It is proper to couple with a treatise on the law of simple contracts sufficient discussion of the law governing promises under seal as may be necessary to distinguish the former from the latter.

It is not inconsistent with a declaration that this treatise is a distinct contribution to the literature on the subject, to say that conclusions other than some of those reached by the author might be more satisfactory. For example, one could not very well agree with the conclusion reached in the discussion on page 14 in respect of the question which would arise in the case of an offer sent from New York to Massachusetts and a letter of acceptance mailed in Massachusetts, addressed to the offerer in New York. The point of the Massachusetts doctrine in respect of an offer by letter, contemplating a bilateral contract, is that the acceptance, to be such, must be a promise, and that a promise is nothing until it is communicated, and that therefore the letter containing such promise must be received and read by the offerer before acceptance takes place.

By way of further illustration, it would be difficult to agree with the statement of the author on page 70. In a discussion of the case of Pillans *v.* Van Mierop, he says:

"As the case concerned negotiable paper, it was not necessary to pass upon the question of consideration, and the Court could have sustained its conclusion upon the theory that the doctrine was not involved."

The converse seems to be the fact and the law, namely, that not only is the doctrine of consideration involved in questions of negotiable paper, but in the case of negotiable paper, as in the case of simple contracts, the doctrine of consideration is inevitably involved, the only distinction between negotiable paper and simple contracts being, that in the case of the former consideration is presumed, whereas in the latter it is not. Therefore, although "the case concerned negotiable paper" it was necessary for the Court to pass upon the question of consideration. And incidentally it might be remarked that the Court passed erroneously upon that question, and the decision in the case would not be law anywhere to-day.

One may well agree with the author upon the proposition that definitions are in general unsatisfactory and frequently lead to confusion, but one cannot agree with the author when he remarks: "It may well be said that any description of consideration leaves us where we started and no satisfactory definition can be given. This is true, and an understanding of the doctrine must be gained through its application and by illustration." With this before us it may well be asked why it is not entirely adequate, descriptive and precise to say that in simple contracts *any surrender of a legal right may be a consideration for a promise.* This covers all the cases, is simple, and gets rid, at once, of the incorrect conception that anything to be a consideration must be of value.

"Detriment," as thus defined, is the universal and the only consideration which will serve for a simple promise.

The author enters into a discussion of what he regards as the troublesome question involved in cases of offers contemplating unilateral contracts, in case the offerer revokes his offer, when the act called for has been partially performed. The difficulty in the question, he conceives, arises because of the resulting hardship to the offeree. He advances a very ingenious theory by which to overcome this hardship. His theory is that by the application of the doctrine of estoppel the offerer will be prevented from withdrawing his offer after the offeree has acted in reliance upon it. It would seem that this suggestion, ingenious as it is, must be rejected because, as the author himself in some degree admits, the elements of an estoppel are not present. For an estoppel there must be a representation which is false. All an offerer does is to make a promise, that is to say, an undertaking to do something in the future, if the offeree will do something else. Now, a promise, or an undertaking to do something in the future, cannot possibly be true or false. It is simply an engagement for the future and therefore the first element of an estoppel is entirely lacking. Furthermore, there does not seem to be any great hardship to the offeree except one of his own making. He is not obliged to begin performance of the act which constitutes the acceptance of the offer, and if he does begin it, he must realize that it is at his own risk; and if in fact the offer is withdrawn before he finishes the act, it is only what he might have expected. He could have protected himself easily by insisting that the contract should be in the bilateral form.

The author's discussion of the subject of "conditions subsequent"

and the clear brand of spuriousness which he puts upon them is admirable. They have no place in simple contracts and should be relegated to the province where they properly belong, to wit, the law of property. What are improperly called conditions subsequent are in reality nothing but conditions precedent, as the writer emphatically declares.

Space will not permit any further reference to specific parts of this interesting work, and it only remains to say that the treatise has demonstrated the fact that a subject is never exhausted, but may always be further developed and elucidated out of the mature thoughts of earnest scholars.

Charles Thaddeus Terry.

THE LIABILITY OF RAILROADS TO INTERSTATE EMPLOYEES. By PHILIP J. DOHERTY. Boston: LITTLE, BROWN & COMPANY. 1911. pp. 371.

This treatise concerns certain aspects of federal regulation of the remedy for death or injury to employees in the service of interstate railroads. In an appendix the author reproduces the principal federal statutes defining the responsibility of the interstate carriers as employers toward their employees; such as the so-called Employer's Liability Acts of 1906, 1908 and 1910; the Safety Appliance Acts of 1893, 1896, 1903 and 1910; the Ash Pan Law; the Hours of Service Act, and the Boiler Inspection Law. The last four Acts are important elements in any discussion of the Federal Employer's Liability Law because Sections 3 and 4 of the latter give a remedy to those within the purview of that act wherever the employer's "violation . . . of any statute enacted for the safety of employees contributed to the injury or death of such employee."

The treatment of the subject is divided into two nearly equal parts, the first consisting of a discussion of the state of the law preceding the various enactments of Congress and the effect of these acts, together with a most painstaking analysis of the statutes and their application; the second, comprising a consideration of the question of the constitutionality of the Employer's Liability Act of 1908. This part concludes with a review of the now famous Hoxie Case. The author is much more effective in the first division of his book than he is in his discussion of constitutional questions.

The analysis of the principal statute and the comment upon and quotation from adjudicated cases are in the main excellent. This portion of the volume will be of real value to that very considerable number of our bar engaged in litigation respecting personal injuries. It gives an orderly and fairly detailed treatment of all the essential points likely to arise in any ordinary litigation under the Act.

The constitutional questions are not treated, however, in the same thorough and authoritative manner, and one feels that there is much more of metaphysics and economics underlying the author's conclusions than there is of law.

Jackson E. Reynolds.

BOOKS RECEIVED.

FEDERAL CORPORATION TAX LAW. By THOMAS G. FROST. Albany, N. Y.: MATHEW BENDER & Co. 1911. pp. xvii, 321.

HISTORICAL INTRODUCTION TO THE ROMAN LAW. By FREDERICK PARKER WALTON. Boston: LITTLE, BROWN & Co. 1912. pp. xvi, 391.